

DELEGATE OULAHAN: Thank you. Madam Chair, I am very pleased to hear the explanation from the committee expert because it shows exactly what I said. What the committee is proposing is the expansion and extension and revolution of the concept of writ of habeas corpus. And if I heard it rightly, it is an attempt to overcome a decision of the Supreme Court which limits the use of the writ. What has happened in the years is the writ has been misused by persons who are incarcerated and the federal courts of appeal throughout the United States have had to adopt rules and say after the 25th writ in the 25th year we are not going to hear any more. So this is a novel extension of the writ. I urge my fellow delegates to go to constitutional language which has stood the test of time since 1787 and not engage in these new experiments in criminal law.

Incidentally, we have no explanation in the report that was made by this committee, and I think on something this important we are entitled to this. We only stumbled on it because I raised the issue.

DELEGATE MARCUS: Point of order.

CHAIRPERSON FREEMAN: Delegate Marcus.

DELEGATE MARCUS: I would like to point out to Delegate Oulahan that he was part of the folks that were

urging, in fact pestering this committee to get out reports and therefore we didn't have more time to finish them the way he wanted.

CHAIRPERSON FREEMAN: The motion on the floor is to close debate on the Oulahan substitute motion. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Debate is closed on the Oulahan substitute motion. His motion would read as follows, and for those of you who have the Oulahan package of amendments, it is on page 27, and I will read it. It would read: "The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

Those in favor of adopting the Oulahan substitute motion, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 12.

CHAIRPERSON FREEMAN: Those opposed, raise your hands.

(A show of hands.)



SECRETARY COOPER: 14.

CHAIRPERSON FREEMAN: Abstentions?

SECRETARY COOPER: 6.

CHAIRPERSON FREEMAN: The Oulahan substitute motion is defeated.

Is there further discussion of Section 14? Delegate Garner.

DELEGATE GARNER: I call for the previous question.

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on Section 14. All those in favor, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Can we have a show of hands on that. All those in favor of closing debate, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 14.

CHAIRPERSON FREEMAN: All those opposed to closing debate? Hands up once and for all, please.

(A show of hands.)

SECRETARY COOPER: 8.

CHAIRPERSON FREEMAN: Debate is still open. Is there further discussion on Section 14? Delegate Rothschild.

DELEGATE BARNES: Debate is still open?

DELEGATE JORDAN: It takes two thirds.

DELEGATE BARNES: Point of order.

CHAIRPERSON FREEMAN: Delegate Barnes.

DELEGATE BARNES: Debate is still open?

CHAIRPERSON FREEMAN: Yes, it is. It takes two-thirds to close debate.

Delegate Rothschild.

DELEGATE ROTHSCCHILD: I am having a problem with this section. What the committee did is very good in some respects, and yet I can see what the problem that Delegate Oulahan is having. First of all, Delegate Baldwin spoke and said it shouldn't be a privilege, it should be a right and he spoke to the language of Delegate Oulahan that it is a privilege to be suspended at certain times. Yet the committee's language is very good, but without the underlying explanation of it we would sort of be adopting something that we don't have the explanation for.

So I am saying we are tabling this until we get a better explanation of what the committee has before us, and

if there are other people who agree with me somebody else can make the motion to table it. But right now I don't think we have enough information to vote intelligently.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: Where are we at this stage? I know that debate is open.

CHAIRPERSON FREEMAN: We are on Section 14 and Delegate Shelton has the floor.

DELEGATE SHELTON: I know we had three against or four against and -- we have had a free flow of discussion.

CHAIRPERSON FREEMAN: We have had three for and three against.

DELEGATE SHELTON: May we have a time fix on this free flow or --

CHAIRPERSON FREEMAN: If you would like to move.

DELEGATE SHELTON: I would like to move that we limit the free flow discussion to five minutes.

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second.

DELEGATE LOVE: Madam Chair, I think that our rules allow closing debate only after 15 minutes, if I recall correctly. Maybe Mr. Baldwin can --

DELEGATE SHELTON: I don't have my book in front

of me.

CHAIRPERSON FREEMAN: Could you repeat that, Delegate Love?

DELEGATE LOVE: I think the closing of debate in our rules has a minimum of 15 minutes, if I recall correctly.

CHAIRPERSON FREEMAN: That is correct. I think that is correct.

DELEGATE SHELTON: All right, how many minutes do we now have left?

CHAIRPERSON FREEMAN: I have --

DELEGATE SHELTON: 15 minutes from now, Madam Chair.

CHAIRPERSON FREEMAN: 15 minutes from now?

DELEGATE SHELTON: Right.

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on Section 14 no later than 15 minutes from now.

DELEGATE SHELTON: 15 minute, leave off the "no later."

CHAIRPERSON FREEMAN: Thank you. Is there discussion on that motion? This is a non-debatable motion. All those in favor of adopting, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: We have 15 minutes or less to discuss it, and that will bring us to three minutes of 8:00, according to my watch. I will let the Secretary time it, however. Delegate Bruning, you had your hand up?

DELEGATE BRUNING: Yes, I move the previous question.

CHAIRPERSON FREEMAN: That is not in order at this time. Delegate Mason.

DELEGATE H. MASON: Madam President, I rise to make an inquiry and then I would like to make a motion. Would it be inappropriate for me to make a motion to delete part of the section if I -- would that be in order?

CHAIRPERSON FREEMAN: Yes.

DELEGATE H. MASON: I move to put a period after the word "time" in line 19. It will read then, "A writ of habeas corpus shall be available at all time," period.

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we put a period at the end of "times" in line 19. Do you care to speak to your motion now, Delegate Mason?

DELEGATE H. MASON: No.

CHAIRPERSON FREEMAN: Is there discussion on that motion? Delegate Barnes.

DELEGATE BARNES: I would like to have legal counsel just give us a brief interpretation of that.

CHAIRPERSON FREEMAN: Mr. Thomas, there is a motion on the floor to put a period after the word "times" on line 19, so that it would read "The writ of habeas corpus shall be available at all times."

MR. THOMAS: What is your question? What is the effect of that?

DELEGATE BARNES: Yes.

MR. THOMAS: Well, that makes it a little more standard, taking away any kind of limit or exception to rebellion or public invasion is normally in there. It would make it a little more standard and I think would get the point across. But as to whether it is a good thing or not, that is your decision. I have no problem with it legally.

CHAIRPERSON FREEMAN: Delegate Maguire.

DELEGATE MAGUIRE: I would like to bring this up. I agree with delegates, it just seems to be one more area where we are going out on a limb and I still don't feel the committee has been able to explain to me what the big difference is and what is more right, what right you are giving

me that wouldn't be given to me with this period. I still don't understand that.

CHAIRPERSON FREEMAN: Does the committee care to respond? Delegate Jackson, are you raising your hand for the committee?

DELEGATE JACKSON: I want to ask a question.

CHAIRPERSON FREEMAN: Fine. I would like to have somebody from the committee answer the question and then I will have someone from the committee speak on the Mason amendment. Delegate Marcus.

DELEGATE MARCUS: We sort of went through the entire language as the committee explained it. What the committee is proposing safeguards the rights of the people of this state by in fact guaranteeing that persons will be able to file for a writ successively, that means they will be able to do it not in an abusive fashion -- and that hasn't been the problem -- but rather have been able to file successively when in fact an error is found some years later, not instantly after trial, which has been the case in some instances; that it safeguards the writ in guaranteeing that it will be granted promptly, as soon as you ask for it; that safeguards your rights in saying that a higher standard of review, that is a greater test, something firmer will not be applied to it

when it is being reviewed by the court, and that it specifies those instances in which your rights are guaranteed -- in detention, in conviction, and in sentencing.

Further, the reason why the phrase "whether or not the petitioner is in custody" is in there, is to safeguard the right of the individual who may in fact have a challenge to the constitutionality or legality of a particular conviction or sentence or detention after the fact when they may have already been released. It safeguards your right. It says in no uncertain terms that in fact you can challenge those things, instead of someone saying to you, well, you are out, what do you care. That is why the committee -- that is how the committee safeguards what in fact your rights are with regard to habeas corpus.

CHAIRPERSON FREEMAN: Thank you. Brian Moore.

DELEGATE B. MOORE: (inaudible)

CHAIRPERSON FREEMAN: The committee decided not to respond to that question. Delegate Robinson.

DELEGATE ROBINSON: Madam Chair, we have been on this for a very long time now and I am very concerned that this body is losing sight. We had an amendment by Delegate Oulahan that would have given us verbatim, this section verbatim from the U.S. Constitution. Now, I would like to

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know what is so inherently wrong with language from the United States Constitution that this body cannot accept. I am also very concerned that in our attempt to be novel that we are going to do great damage to the entire constitutional process. I urge this body to put aside the debate and to rewrite this entire section on habeas corpus. Language like this can only come from the process of constitutional test in the District of Columbia.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: I would urge delegates to vote against the Mason amendment. You know, we can all say that some language is clear and some language is not clear. There is language in the Constitution that says all men are created equal and that later went down the drain. So I think if we don't define certain things, Madam Chair, we do come under different interpretations.

Here what we are saying, Madam Chair, is that we have put forth something which as a matter of fact is not unconstitutional, which is the extension of the Constitution. What we are saying, Madam Chair, is that this writ should be guaranteed to people at all times. This says nothing more than that.

DELEGATE MAGUIRE: Why don't you just say that?

DELEGATE JACKSON: Please let me finish. You have to read this. You know, I am an ignorant -- you know, I am a dumb person and if I can read, anybody can read, do you know what I mean. So please. Forgive me, Madam Chair.

Now, if another question comes up, which is the real question, which is the question that my dear friend Mr. Oulahan raises, the question of public safety. If you want to deal with that, deal with it. If we remember when the executive was up, the same question was addressed about whether the governor should do certain things for the public safety. We know what the power of that is. But, Madam Chair, if we want to deal with that, we should go forward. But around this question we have not spoken around certain things. We are saying this should be given. We are saying if someone is jailed because they are on a picket line and someone says this should be granted, at least they know it applies while they are in jail, nothing more and nothing less. And in this case, Madam Chair, if there are other things, it will go back to the federal Constitution. There is nothing harmful here and I don't know why, as a lawyer said before, I don't know why we are just going around a long time on this when it is, Madam Chair, to my understanding absolutely clear.

CHAIRPERSON FREEMAN: Thank you.

Delegate Baldwin.

DELEGATE BALDWIN: I too am a member of the committee. If we -- the question was asked what would happen if we adopt the Mason amendment. She put a period after "times." What remains is a clause, a modifier. It modifies "at all times," and I would be comfortable with her amendment. As Delegate Jackson said, all they did was to spell out "at all times, unlawful detention, conviction, sentencing, and whether or not the petitioner is in custody." So I would hope we wouldn't spend fifteen minutes debating this when both of them means the same. One, you are deleting a clause, a modifier that modifies the sentence. So when you vote, you really are not losing either way.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I move the previous question.

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on the Mason amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is closed on the Mason amendment.

Section 14, line 19, the Mason amendment would read as follows: "The writ of habeas corpus shall be available at all times." All those in favor of the Mason amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Mason amendment carries. Is there further discussion on Section 14? Delegate Eichhorn?

DELEGATE EICHHORN: I call for a division?

CHAIRPERSON FREEMAN: Would you like a division?

DELEGATE EICHHORN: Yes.

CHAIRPERSON FREEMAN: All right. All those who are in favor of the Mason amendment, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 16

CHAIRPERSON FREEMAN: All those opposed to the Mason amendment, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 17.

CHAIRPERSON FREEMAN: Abstentions?

SECRETARY COOPER: One.

CHAIRPERSON FREEMAN: The Mason amendment is defeated, contrary to what I said earlier. The vote was 16 in favor, 17 opposed, with one abstension.

Delegate Eichhorn, you had your hand up?

DELEGATE EICHORN: I think we have a problem. We understand the committee's explanation but not the impact and we have been told a little bit about the impact in terms of protecting the rights of individuals. In opposition, we have heard that it is far out, that it is amending the U.S. Constitution, but I would like to know a little -- I think we are uncomfortable doing something that we don't understand. What are the negative impacts that cause some people here to oppose it? Is it expensive? Does it tie up the courts? Does it set criminals free? I mean what is wrong with it other than it isn't anywhere else? Is it a legal problem?

CHAIRPERSON FREEMAN: Mr. Thomas.

MR. THOMAS: The problems I think are two-fold, that people are having. One is the fact that it extends a right given by the Constitution. Secondly, it does not take

into account the -- its intent is to give habeas corpus more freely, an unlimited right to habeas corpus, and it does not provide for abuses of habeas corpus. For instance, their main reason for this amendment "at all times," the modified -- the person who, as Mr. Oulahan said, applies for the writ of habeas corpus 25 and 30 times, the person who applies every year.

DELEGATE EICHORN: What is wrong with it? I mean what happens when someone applies 25 times? Why is that so terrible, and does it sometimes set someone free who should not be free? How often --

MR. THOMAS: The complaint is proliferation of litigation, that the federal courts are already bogged down with litigation and unlimited habeas corpus simply adds to it.

Thirdly, and a problem that I have is that this is new unique language. Whenever you put language in a constitution that is not standard, you create a whole new set of litigation. Law has to be established on that, the consequence of new wording is to automatically challenge the new wording and see how far it can get. Okay. So where in a former sense we have an established law of habeas corpus, with established case law on it, and this would create -- this in terms of attempting to create new right adds to that

litigation, to those tests.

I don't think that anything in this language refers to anything concerning the standard of review. I think without limit applies to that. The fact that it is applied promptly and just the fact that it is a writ means that it must be heard promptly.

In stating "in all cases of unlawful detention, conviction or sentencing," in stating those conditions, the committee might be unwittingly limiting the time that you can apply for habeas corpus. So those are some problems that I see.

CHAIRPERSON FREEMAN: All right, our time has run out, delegates, and we passed a motion a while ago that we would close debate at a time certain.

DELETATE : May I respond?

CHAIRPERSON FREEMAN: I think you would have to get permission from the delegates to respond. If you wish to make that motion, you may, but we need to vote according to the motion we passed earlier.

Section 14 is on the floor. All those in favor of adopting Section 14 as agreed, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: We are going to have a division. All those in favor of Section 14, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 20

CHAIRPERSON FREEMAN: All those opposed, please raise your hands.

(A show of hands.)

SECRETARY COOPER: 7.

CHAIRPERSON FREEMAN: Abstentions?

SECRETARY COOPER: 4.

CHAIRPERSON FREEMAN: Section 14 is adopted.

Delegate Mason.

DELEGATE C. MASON: I move Section 15, Abolition of Common Law Criminal Law Offense.

DELEGATE : Second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 15. We do in fact have a minority section on 15. Delegate Oulahan.

DELEGATE OULAHAN: Mr. Chairman, I would like to repeat what I said in previous remarks. Like I said, this is a sleeper. Abolition of common law offenses in the



District of Columbia is going to make it impossible, according to the United States Attorney, to prosecute such offenses as murder, burglary, extortion, embezzlement, and conspiracy. The reason is that in statutes of the District of Columbia, the words "intent" and "malice" is used. It is not defined. It is based upon the common law which we inherited in 1801 and which has built up over the following years in our city.

Further, the committee doesn't tell you that there is a statute in the District of Columbia that is going to be amended, and that is the common law criminal statute. Under that common law criminal statute, such public nuisances as disorderly houses that have been put out of business and the persons convicted, if you want to wipe that out, that is fine, go with the amendment. But again we have a situation in which the committee has not informed you fully of the consequences.

I hope I have helped you. Thank you. I move that it be deleted.

CHAIRMAN BALDWIN: The Chair would like to correct an error made. There was not a minority report, I was informed. There was only an amendment.

Delegate Oulahan, in the future make your motion first before you address the group, then we will have

something on the floor.

DELEGATE OULAHAN: I make my motion that that section be stricken.

DELEGATE : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we delete the committee section, Section 15, and insert the Oulahan amendment. Discussion?

DELEGATE OULAHAN: I don't have any amendment. It is to strike the section as a whole.

CHAIRMAN BALDWIN: Just strike it. Okay.

DELEGATE KAMENY: May I respond to the --

CHAIRMAN BALDWIN: Yes, but first we would have to head from other delegates.

DELEGATE KAMENY: I would prefer to respond now.

CHAIRMAN BALDWIN: You may respond now.

DELEGATE KAMENY: Fellow delegates, Delegate Oulahan has presented you with a horror story which has absolutely no basis in fact. First, he tells you that all of the procedural accessories for prosecution would be abolished. They would not be. He has gotten himself lost in two words in the title of this section and has not read the section. Let me read it to you, and listen to what I am saying and see if this is not really what you want your law to say.

Every crime shall be defined with specificity in a statute enacted by the legislature of this state, and no person shall be accused, arrested, tried or convicted for any act not expressly defined as an offense by such statute.

In other words, all that this says is the law shall tell you of what you are going to be tried, and nothing else. Now, let us look at what Delegate Oulahan suggests is going to happen. He says that we propose to repeal 22 D.C. Code, Section 107, which says, in Delegate Oulahan's own quotation, "whoever shall be convicted of any criminal offense not covered by any section of this Code." Now, do you want to be convicted of offenses that you can't find in the Code, so you don't know what you did wrong, so that you don't know what you are going to be convicted of?

That is, what he is suggesting that can in fact happen now, and he is suggesting that we stick with that. He says the committee does not disclose that this section has been used to secure convictions in the case of keeping a disorderly house. Well, if the legislature wants to make a crime of keeping a disorderly house, let them write a statute which tells you at what point your house becomes disorderly, what it is that you must be doing in that house to make it disorderly, and what is going to happen to you if you do

those things. That is a perfectly reasonable thing to expect of a legislature, and Delegate Oulahan would say that we shall not do this.

He says in his next section that this would effectively -- he says inaccurately and incorrectly that this would effectively repeal 49 D.C. Code, Section 301, which says in effect that the laws of the District shall include all British statutes in force in Maryland on February 27, 1801, none of which appear on our statute books. Maryland has gotten rid of most of those. He would have us continue to keep them and you continue to be arrested for them.

Delegate Oulahan's own arguments here are the best possible arguments for accepting this provision exactly as written. All it says is the legislature shall tell you exactly, expressly and explicitly what you are going to get arrested for, and if it doesn't say it in so many words it is not a law. And if some British said it in 1555, it is also not a law. That is all it says. Many states have done this. Large numbers of states have done this. You will find this provision in quite a number of states. It is a perfectly reasonable one and I urge you to defeat the Oulahan proposal to delete and adopt the committee's amendment, the committee's proposal exactly as stated. You will be the

—  
better off for it.

Thank you.

CHAIRMAN BALDWIN: Delegates Cassell, Barnes, and  
Bruning, in that order.

DELEGATE CASSELL: I move the previous question.

DELEGATE : I second.

CHAIRMAN BALDWIN: The previous question has been  
called for. Those in favor, signify by a show of hands.

(A show of hands.)

SECRETARY COOPER: 17.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

SECRETARY COOPER: 10.

CHAIRMAN BALDWIN: Abstentions?

(No response)

CHAIRMAN BALDWIN: Debate has been terminated. I'm  
sorry, two-thirds. You may continue. Delegates Barnes,  
Bruning and Long.

DELEGATE : (inaudible)

CHAIRMAN BALDWIN: We will hear from general counsel  
at the end.

DELEGATE : (inaudible)

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MR. THOMAS; I'm sorry, I won't take up too

much time, just to state the issues involved. Abolition of common law criminal offenses is a modern trend normally based on the concept of exactly what Mr. Kameny said. You should know what you are being charged with. The only thing wrong with that, what the other side would say, is I hope we don't forget anything.

CHAIRMAN BALDWIN: Excuse me, general counsel. Would Delegates Nahikian, Love, and Robinson have their seats, please.

DELEGATE ROBINSON: I am already sitting.

CHAIRMAN BALDWIN: I'm sorry, Delegate Robinson.

MR. THOMAS: The argument against this section would be, number one, if in fact D.C. is prosecuting people for common law offenses, what happens between the time this constitution is enacted and the time that they write the statute.

Secondly, suppose the legislature forgets something. I guess those are -- that may be a weaker argument, but not really knowing what portion of Mr. Oulahan's original statements are correct as far as what percentage of crimes D.C. is now prosecuting that are common law, I wouldn't be able to give an opinion one way or the other but just to speak what the pros and cons involved are.

DELEGATE CORN: Would you give me an example of

common law that might not be on the books?

MR. THOMAS: Yes. In some states murder is not on the books

DELEGATE CORN: How about in the District?

MR. THOMAS: But it is not true here. But that is not to say that there are not other crimes that may be --

DELEGATE CORN: Could you give me any here in the District?

MR. THOMAS: No, I couldn't. Could you, Mr. Oulahan?

DELEGATE OULAHAN: Mr. Chairman, as I explained earlier, common law is used for specific statutory crimes such as murder, extortion and the crimes which came over from the British in 1801. The only specific crimes of which I am aware of, Mr. Chairman, are maintaining a disorderly house and the statute is also being used where guards in prisons have allowed prisoners to escape and that is a common law crime that has been used.

Now, I just want to give the effect of this. The U.S. Attorneys Office told me this morning that --

CHAIRMAN BALDWIN: Delegate Oulahan, you do not have the floor. We will next hear from Delegates Bruning, Long and Simmons.

DELEGATE BRUNING: With trepidation, I call for the

question.

DELEGATE : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we close debate. Those in favor, signify by saying "yea."

(A chorus of "yea.")

CHAIRMAN BALDWIN: Those opposed, "no."

(A chorus of "nay.")

CHAIRMAN BALDWIN: Abstentions?

(No response)

CHAIRMAN BALDWIN: Debate has been terminated.

DELEGATE LONG:

CHAIRMAN BALDWIN: Those in favor of terminating debate, signify by a show of hands.

(A show of hands.)

SECRETARY COOPER: 26.

CHAIRMAN BALDWIN: Those in opposition, likewise.

(A show of hands.)

SECRETARY COOPER: 2

CHAIRMAN BALDWIN: Abstentions?

(NO response)

SECRETARY COOPER: Debate has been terminated. That was on the Oulahan amendment. We are now voting on the



Oulahan amendment to strike Section 15. All those in favor of the amendment, signify by a show of hands.

(A show of hands.)

SECRETARY COOPER: 4.

CHAIRMAN BALDWIN: Those in opposition.

(A show of hands.)

SECRETARY COOPER: 27.

CHAIRMAN BALDWIN: Abstentions.

(A show of hands.)

SECRETARY COOPER: 2.

CHAIRMAN BALDWIN: The Oulahan amendment is rejected.

The Chair will now entertain a motion for the original section.

DELEGATE C. MOORE: I so move.

DELEGATE : I second.

CHAIRMAN BALDWIN: It has been moved and seconded that we adopt Section 15. Delegates Simmons, Long and Blount.

DELEGATE SIMMONS: Mr. Chairman, I just want to say that general counsel had no substantive comments to make. It is his responsibility to give us guidance if we are headed in a dangerous and outrageous direction. I have every reason to believe that that is not the case or we would have heard

from general counsel to that effect, and it is based upon what I think is reasonable and understandable action on his part and this lengthy debate that has ensued with regard to this section. And with the knowledge that the clock is ticking and we need to move on, I move the previous question.

DELEGATE : I second it.

CHAIRMAN BALDWIN: The previous question has been called for, to close debate. We will now vote on --

DELEGATE LONG: I have an amendment that I would like to --

CHAIRMAN BALDWIN: Delegate amendment?

DELEGATE LONG: Yes.

CHAIRMAN BALDWIN: Okay.

DELEGATE LONG: This is an amendment which I think can be agreed to. All it does is to say at the end of line 5, "in a time period specified by law." This is to get at the problem of suddenly, whack, all the common law disappears and everything is chaos, so that there can be an orderly transition to this new situation where everything is specified in the law, otherwise things are going to fall through the cracks and we are going to have a terrible time.

CHAIRMAN BALDWIN: Delegate Simmons.

DELEGATE SIMMONS: Point of information. Is this the article on transition?

DELEGATE KAMENY: I was going to ask that. I believe that the article on transition -- and delegates cut me off -- I believe the article on transition addresses the coming into effect of the constitution with respect to laws on the books now.

MR. THOMAS: Yes, but that wouldn't affect his point because this is the Bill of Rights that would go into effect immediately. This doesn't have to have a law to describe it. So I would still say his motion is valid.

CHAIRMAN BALDWIN: The Chair will accept general counsel's answer. Is there discussion of the Long amendment? Is there discussion on the Long amendment?

DELEGATE B. MOORE: Would you repeat the Long amendment, please.

CHAIRMAN BALDWIN: "Extend the statute in a time period specified by law."

DELEGATE BRUNING: I move the previous question.

DELEGATE : I second it.

CHAIRMAN BALDWIN: The question is on the motion to terminate debate. It has been moved and properly seconded to terminate debate on Section 15. Those will signify by saying

"yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those in opposition, "no."

(A chorus of "no.")

CHAIRMAN BALDWIN: Abstentions?

(No response)

CHAIRMAN BALDWIN: Debate has been terminated and the original motion to adopt Section 15 is open for discussion -- the Long amendment, I'm sorry, the Long amendment. We are now voting on the Long amendment, "in a time period specified by law."

Those in favor of adopting the Long amendment, signify by a show of hands.

SECRETARY COOPER: 15.

CHAIRMAN BALDWIN: Those in opposition, signify by a show of hands.

(A show of hands.)

SECRETARY COOPER: 11.

CHAIRMAN BALDWIN: Abstentions.

(A show of hands.)

SECRETARY COOPER: 3.

CHAIRMAN BALDWIN: The Long amendment is adopted.

CHAIRPERSON FREEMAN: We are back to the original

motion to adopt Section 15. Is there further debate on that?  
Delegate Garner.

DELEGATE GARNER: I call for the previous question.

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded  
to close debate on Section 15. All those in favor, please  
say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Debate is closed on Section 15.  
All those in favor of adopting Section 15, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: Section 15 is adopted.  
Delegate Mason.

DELEGATE C. MASON: Section 16, Abolition of  
Sovereign Immunity. I move Section 16.

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to adopt Section 16. Is there discussion on that? Delegate Jordan.

DELEGATE JORDAN: Madam President, I have an amendment that I would like to offer to this section.

CHAIRPERSON FREEMAN: Is it in writing, Delegate Jordan?

DELEGATE JORDAN: I gave it to Delegate --

CHAIRPERSON FREEMAN: Could you read the amendment, please, Delegate Jordan.

DELEGATE JORDAN: Yes. The amendment is to insert on line 13, after the semicolon, "including the failure, inability or refusal by law enforcement agencies of the state to reasonably provide to individuals protection from crimes of violence."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to insert on line 13 the following language after the word "omission," "including the failure, inability or refusal by law enforcement agencies of the state to reasonably provide to individuals protection from crimes of violence."

Is there discussion on the amendment? Delegate Jordan.

DELEGATE JORDAN: I wish to speak last.

CHAIRPERSON FREEMAN: Thank you. Is there discussion on this amendment?

(No response)

Would you like me to read it one more time? After the word "omission" on line 13, to add the following words, "including the failure, inability or refusal by law enforcement agencies of the state to reasonably provide to individuals protection from crimes of violence.

Delegate Talmadge Moore.

DELEGATE T. MOORE: Do I have an understanding, Mr. Jordan, that you are proposing that we are not giving up our protections and we are not bound to do this? That is the way I read your amendment.

DELEGATE JORDAN: I saw two parts to his question. One is it is to partly do that, and the second is are they bound to do it. I think -- I don't know whether it is to partly do it, but they are not bound to do it.

CHAIRPERSON FREEMAN: Thank you. Is there further discussion on the Jordan amendment? Delegate Shelton?

DELEGATE SHELTON: I don't quite understand the

delegate's intent. I know he has reserved the right at the end, but I am not able to follow it because he would have so many loopholes, I would say -- ability, that means that enforcement would have to be made available -- maybe you can give me a little better explanation. I wish to support you, but I don't quite understand what you are intending, Delegate Jordan. Could the Chair --

CHAIRPERSON FREEMAN: Delegate Jordan, would you try to answer that question? I know you have reserved to speak at the end, but I think you can answer her question.

DELEGATE JORDAN: Well, I thought it was self-explanatory. The question about loopholes, I was trying to close the loopholes by including the provision of their "inability or refusal to provide" reasonable services. It is understood by this amendment that if an effort were made to provide these protections and it wasn't sufficient, that that would not constitute a cause of action against the state. However, if the state did not make a reasonable effort to provide these protections, that it would be a cause of action to take place. In terms of whether resources would be available or not, I can't answer that question because I don't know what priorities we would establish in the new state.



CHAIRPERSON FREEMAN: Delegate Bruning, did you have your hand up?

DELEGATE BRUNING: I did, and I think I would be in a troubled position if we favor intent -- I am a little worried that the language would lead to endless litigation by victims of crime, of which I think probably all are -- and would lead to a number of questions, including the priorities given and it seems to me the question may very well hinge around how much money we give to the police department and how much we essentially put into public safety as opposed to other categories, and I am a little concerned that essentially we have opened a pandora's box and the only way to close it may be to put all our efforts in public safety.

CHAIRPERSON FREEMAN: Delegate Coates.

DELEGATE COATES: Madam President, I speak in support of this amendment. The concept of reasonableness, as I understand it, considers the extent to which there is capability. The law enforcement agencies, et cetera, could not be held responsible for more than the capability which exists, and as one applies this provision, incorporating a standard of reasonableness, one considers the strength by the number of police officers, et cetera, which defines the capability. So as I understand the provisions, it would not

require that we multiply geometrically the number of law enforcement officers. It simply adds in the light of those we have, was a reasonable effort made to provide protection from violent crime. So the question that Delegate Shelton raises and Delegate Bruning raises, it seems to me, is answered as we understand the concept of reasonableness.

CHAIRPERSON FREEMAN: Okay. Is there further discussion on the Jordan amendment? Mr. Thomas.

MR. THOMAS: There seems to be confusion, and if I could provide some background as I think is the reason for this amendment, I think that Mr. Jordan is writing this amendment in response to a recent case in the District of Columbia Court of Appeals. Very briefly, the facts of this case are a woman was being assaulted in a house, people heard what was going on upstairs, they called the police -- does everybody know the facts -- three women upstairs called the police and told them what was going on. The policemen said they would come. All right.

No policemen came or a policeman came and drove past the house. She called again. The second time policemen came, stopped in front of the house, may have knocked on the door, went back in the car and drove away. The women, the three women, thinking that the police had arrived or were

coming to the house, called down and told the victim that the police were coming. The perpetrators, hearing the women upstairs, then went up and got the women, took them to another place, assaulted them and ended up sexually assaulting all of them.

The women brought a case against the police department for negligence in failure to provide their duty of ordinary care. The court ruled that a policeman -- that the police department, while having a duty to the public as a whole, did not have a duty to a particular individual, did not owe a duty of ordinary care to a particular individual but owed it to the public at large, and that this duty was not owed unless they created a special duty between an individual. For instance, if they were looking for somebody and told you to go along and subsequently you were in an accident, then they might be liable then.

And I think that Mr. Jordan's amendment is aimed at closing that gap. Is that --

DELEGATE JORDAN: No.

MR. THOMAS: All right, you explain it last. Anyway, I have trouble with the language used to do that, particularly "inability." If a policeman is unable to reasonably respond to something, how can he be held liable? Failure

itself is not necessarily a violation of the standard of ordinary care, and the only thing that would be I think applicable here is the word "refusal," if he specifically refuses to provide a standard of care. But Mr. Jordan will respond to all of those things in his time, I think.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: I would like to rise to indicate to this body why I seconded Delegate Jordan's motion and why I think I support it. I too share some of the concerns about the language. I think that my major concern, and I think the meaning of the language offered by Delegate Jordan is this issue of refusal, and the reason why is because most often it is women who are victims of violent crime and in this city it is standard operating procedure for the police to refuse to come, particularly if it is an issue of domestic violence, and I think that that is a major issue. I think it is a major point of concern and obviously the only way it is going to be addressed is if the police department understands that they have a responsibility to protect all people, regardless of the situation.

The other problem that you have is that the police department will sometimes come and -- I have been in situations where they made a decision on the spot that it was

all right, you know, that the woman did something that aggravated this particular violent outburst, and I think that that is my major reason for supporting the Jordan amendment, is because of this language "refusal," and that is operating procedure with our police department.

(3-B)

CHAIRPERSON FREEMAN: May we have quiet in the room.  
Delegate Jordan, you have the floor.

DELEGATE JORDAN: There have been several questions that have been asked around this question. I think first what we need to do is to clarify just what the Carolyn Warren case -- Carolyn Warren v. District of Columbia, et al, case involved. It wasn't just an assault of these three women. It went much further than that.

I just want to read, if I can, for a moment a section from the court's decision. One thing I find very peculiar when I speak on this issue is this happened back in December of this year and there has been no publicizing, no one has brought this to the public's attention, there has been no discussion of this so that we could work out other means of trying to resolve this question.

The court said that Warren and Telefarro called down to Douglas, thereby alerting Kent to their presence. Kent and Morris then forced all three women at knifepoint to

accompany them to Kent's apartment. For the next 14 hours, the women were held captive, raped, robbed, beaten, forced to commit sexual acts upon each other, and made to submit to sexual demands of Kent and Morris.

I am reminded that earlier we voted on sections in this Bill of Rights to provide to those who commit crimes certain opportunities and certain, shall we say, rights, and yet still to the victims of crime we haven't provided at this point any kind of protections or assurances or assistance or help.

And what I am attempting to do, as the committee has cited in its report over and over and over again, that it is attempting to address problems which have occurred as a result of decisions of this court or decisions of that court. I am attempting here to address a decision of the court which held that the police are under no specific legal duty to provide protections to individuals.

I didn't know that. When I pay my taxes, I am under some expectation, that is, when I pay the taxes that are going to the police, when I call them I should be able to receive some kind of response. And if I am in need or if I am in trouble, if I come home and my wife is being raped and my children have been beaten, that I should be able to call on

the state since I am paying taxes to get some kind of response.

And what the court has said very clearly is that the state is under no obligation to provide any kind of response, any kind of assistance to me. That is what it clearly says. So now I don't know why we are creating a state. I don't know what a state means and what our preamble means if we are not going to try to correct some of the deficiencies that have existed in other constitutions, some of the deficiencies that exist in court decisions if we don't have the foresight to see these problems and try to address them.

And it is very clear that the court said there is a long standing principle that the government is under no obligation to provide to individual citizens service. So it is very simple, regardless of how we look at it, the intent here is to insure that those of us who have to live in sections of this city, have to work in sections of this city where there is a tremendous rate of crime, those of us who have to confront the dangers every day of being raped and robbed and victims of violent crime, should have some type of guarantee from the state, the state should try as best it can to make some kind of agreement, some contract with us that is going to provide services that you and I will be prohibited from providing ourselves. In that context, I



would ask you to support this amendment.

Thank you very much.

CHAIRPERSON FREEMAN: Delegate Rothschild and then Cassell and then Schrag.

DELEGATE ROTHSCCHILD: I am in general agreement with this amendment. I do however have some problems with the words, as brought up by general counsel, the concept of "failure" and "inability" meaning difficult to hold police liable for that. I would like to ask counsel, and ask Mr. Jordan if counsel agrees, would it help to clarify, would it be any better to say "willful failure" or something that we could -- is there any we can --

DELEGATE : Neglect.

DELEGATE ROTHSCCHILD: In other words, where the police don't actually refuse but they sort of just look the other way type of thing.

DELEGATE THOMAS: I guess it would be more helpful, but the point to remember is not that -- I don't think the decision was actually saying that the police have to do nothing, that the police do not have to respond to people in trouble. It is saying that it would cause an inordinate burden to say that every individual who police fail to assist have a cause of action against the policemen. For instance,



suppose a policeman tries to save -- tries to answer a call to a burglary, is driving too fast and hits a telephone pole and you are burglarized in the process, that was negligence on his part, he failed to provide protection for you, he was unable to, and he is subject to liable from an individual.

I understand Mr. Jordan's concerns totally, but I think that the amendment is an overreaction to the concern.

CHAIRPERSON FREEMAN: Thank you. Delegate Cassell.

DELEGATE CASSELL: No.

CHAIRPERSON FREEMAN: Delegate Rothschild.

DELEGATE ROTHSCHILD: I would just like to know, as far as the language goes, would it help to clarify it to say willful or unreasonable or --

MR. THOMAS: Definitely.

DELEGATE ROTHSCHILD: Would Mr. Jordan accept that?

DELEGATE JORDAN: No, I would like to use the language that I wrote.

DELEGATE ROTHSCHILD: I would like to make an amendment in that case, that we insert before the word "failure" "willful and unreasonable."

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we amend the Jordan amendment to include -- so that the

language would read as follows: "including the willful and unreasonable failure, inability or refusal." Is there discussion on that motion?

DELEGATE SIMMONS: I call for the previous question.

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on the Rothschild amendment to the Jordan amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: The Rothschild amendment would insert the words "willful and unreasonable" before the word "failure." All those in favor of the Rothschild amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Rothschild amendment is

defeated.

Is there further discussion on the Jordan amendment?  
I had Delegate Cassell.

DELEGATE CASSELL: I was going to rise to call for the question, but having heard the general counsel's concerns about creating some problems for the police and pointing out that the court's interpretation of police ineffectiveness or inactivity, it bothers me considerably. I want to first of all support the Jordan motion.

What bothers me is the concern of the courts to relieve officials, relieve governments of what is considered to be undue harassment on the part of the public, even when they fail to meet their charge. Now, the law is very clear regarding the responsibilities of protective agencies, and the law does not say that they may respond or they may provide protection if possible or when convenient, nor do I know of any law which relieves law enforcement agencies of their responsibility. That is why the courts obviously have to make that interpretation, to relieve them.

Now, citizens never have that latitude. Every single law that is passed, citizens are held accountable to it, whether convenient, whether they are able, ignorance of the law is no excuse. I am concerned about undue concern for

the convenience or to protect city officials or state officials from their negligence, and I don't particularly care if it brings in somebody's amendment a plethora of suits against the state government. I think that the state, first of all, should be fully capable of defending itself and have the resources to defend itself, but if there are to be improvements of the kinds of interpretations the general counsel has mentioned, the only way this can happen is that the citizens have a right to bring suits, and if this means a suit every day, I remind you that the law has the opportunity to arrest people every day, every time they violate a law, and the person's intent is not necessarily a defense.

Therefore I think the Jordan amendment is a reasonable amendment. I would point out also -- there was another delegate who has referred to a divergence between existing laws and our constitutional provisions. I don't think that this is a matter of concern for us. One of the reasons perhaps that the prisons are full of individuals who should not be there, there is a disproportionate number of different kinds of people from different classes, is because of the existing law and the way the courts interpret them.

So it seems to me that if justice is an evolutionary thing that perhaps we should think not in terms of a

divergence from existing law, we should think in terms here of making substantive improvements so that the courts are not quite so able to make interpretations in the interest of and in the defense of officials who violate their process while being very stringent about citizens who violate the law.

I strongly support Delegate Jordan's motion.

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: I have a question for the maker of the motion. It says on line 11 that -- 10 and 11 that any officer or agent thereof in both official and personal capacity shall be amenable to suit, and then comes the Jordan amendment language "including." Is my understanding correct that under the Jordan amendment individual police officers are liable to suit in their personal capacity and not only the state, as President Cassell has said, is capable of defending itself but also individual police officers who may be of modest means, and if so does Delegate Jordan intend to be subject to suit for damages in their personal capacity?

CHAIRPERSON FREEMAN: Delegate Jordan.

DELEGATE JORDAN: I didn't understand the question.

CHAIRPERSON FREEMAN: Would you repeat your question, Delegate Schrag?

DELEGATE SCHRAG: Delegate Jordan's amendment comes

after the language on lines 10 and 11, saying that any officer or agent thereof may be sued in both official and personal capacities. My question to the delegate is when he says that they may be sued for various reasons, including what he says in his amendment, does he mean that individual police officers may be sued for their failure, inability or refusal to provide individuals protection from crimes of violence, and if so does he contemplate suits for money damages against these individual police officers in their personal capacity?

DELEGATE JORDAN: As you can see, the language covers both suits of the state and the officers. I want to be consistent with the language proposed by Delegate Kameny.

CHAIRPERSON FREEMAN: Delegate Simmons, you had your hand up earlier.

DELEGATE SIMMONS: I did. I was going to move the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on the Jordan amendment. All those in favor of closing debate on the Jordan amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed.

(A chorus of "no.")

CHAIRPERSON FREEMAN: Debate is closed on the Jordan amendment. The Jordan amendment would insert on line 13, between the words "omission" and "except" the following words, "including failure, inability, or refusal by law enforcement agencies of the state to reasonably provide individuals protection from violent crimes." All those in favor of the Jordan amendment, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 19.

CHAIRPERSON FREEMAN: All those opposed to the Jordan amendment, raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 11.

CHAIRPERSON FREEMAN: Abstentions?

(A show of hands.)

DELEGATE SCHRAG: Abstentions? I voted no.

CHAIRPERSON FREEMAN: Delegate Schrag, we are in the middle of a vote. You should not raise your hand in the middle of a vote unless you intend to vote that way.

DELEGATE SCHRAG: I'm sorry. Delegate Croft brought to my attention after your comment about Delegate Oulahan -- you asked to keep your hands up and I thought you meant the

"no's." I'm sorry. I apologize to the Chair.

SECRETARY COOPER: 7.

CHAIRPERSON FREEMAN: The vote on the Jordan amendment is 19 in favor, 11 opposed, and 7 abstentions. The amendment is adopted.

Delegate Coates.

DELEGATE COATES: Thank you, Madam Chair. Is not what is described in Section 16 of the committee inconsistent with what we adopted in the pertinent section of the legislative committee report when we provided that legislators would not have to answer for actions?

CHAIRPERSON FREEMAN: Could someone from the committee respond to Delegate Coates?

DELEGATE COATES: And any other place.

DELEGATE KAMENY: That is a very narrowly drawn exception and to the extent that it is an exception that can be worked through on style and drafting. But it is an extremely narrow one. If you read the language, it has to do with debates in the legislature and not with other matters, and this is quite broad and deals with the whole entire rest of government. So to the extent that there may be an inconsistency on that one narrow issue, as with voting by people in prisons in terms of much broader rights for prisoners,



the same kind of question, there is a small inconsistency and a larger right and those things can be worked through.

DELEGATE COATES: There is a section from the Committee on the Legislature entitled "Legislative Immunities" which reads "For any speech or debate in the legislature, legislators shall not be questioned in any other place." It seems to me that as narrowly drawn, it is inconsistent with what has been previously adopted and we perhaps ought to amend the section as follows, perhaps, "as otherwise provided in this constitution."

CHAIRPERSON FREEMAN: Is there a second for that?

DELEGATE KAMENY: Either that or do the same thing when they take it up.

DELEGATE FEELEY: I second it.

DELEGATE COATES: Delegate Feeley seconded it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we amend Section 16 to add the words of Delegate Coates at the end of the section.

DELEGATE COATES: Madam Chair, Delegate Jordan's amendment was inserted after "omissions," but it would appear to be best inserted in the section which is included in lines 9 through 13 .

DELEGATE KAMENY: I would suggest we open the

section, "unless otherwise provided."

CHAIRPERSON FREEMAN: Is that acceptable, Delegate Coates?

DELEGATE COATES: Yes, that would be the opening phrase.

CHAIRPERSON FREEMAN: It has been moved and seconded that we add the words at the beginning of Section 16, the following words, "unless otherwise provided, this constitution," et cetera, et cetera. Is there further discussion on that motion? Delegate Love.

DELEGATE LOVE: Madam Chair, I would like to -- is this an amendment?

CHAIRPERSON FREEMAN: Yes, it is an amendment.

DELEGATE LOVE: Can I make an amendment to the amendment?

CHAIRPERSON FREEMAN: Yes.

DELEGATE LOVE: I would like to delete the words "this constitution" and say "unless otherwise provided by law."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE OULAHIAN: I will second it for purposes of debate.

CHAIRPERSON FREEMAN: It has been moved and seconded

to amend the Coates amendment so that the beginning of Section 16 would read as follows: "Unless otherwise provided by law, the state and its borders," et cetera. Is there discussion on that amendment? Delegate Simmons.

DELEGATE SIMMONS: I think that very recently it has been demonstrated by Supreme Court decision that individual board members can be charged with malfeasance, especially if the rights of students are violated. I believe what they are attempting to achieve here is the same kind of responsibility. The question in my mind with regard to his language, however, is that this will easily be determined as a research matter, not a constitutional issue, it seems to me, and that the style and drafting and the committee which will in the final analysis on third reading determine whether or not the intent of this document or this article maintains its integrity, that will be determined and that needs to be stated here as a part of the constitution because then the research can determine it.

CHAIRPERSON FREEMAN: Delegate Croft.

DELEGATE CROFT: Delegate Love's amendment strikes me as somewhat out of place in this sense, that Delegate Coates made an amendment dealing with a contradiction between certain sections of Section 16 and those passed sections.

Delegate Love's amendment states "unless otherwise provided by law." That is a totally different kind of statement. It is not an amendment. It is a change indeed of substance. It changes the entire substance.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: I would like to respond with respect to this. First, Delegate Love's amendment is not directly germane to Delegate Coates' amendment. Mr. Love, I am talking about you and your amendment, may I have the courtesy of being heard? Mr. Love, I am talking about you and your amendment. May I have the courtesy of being heard?

Secondly, what Mr. Love's amendment is is a very clever end-run to avoid coming out with a flat motion to delete this whole section, because all it does is restore it to exactly where we are now in history, without this section at all. We presently have the right to sue the government, as provided by law, and that is the permission. We go to the government and grovel and say may we sue you, and the government says yes, by law, and we sue and that is exactly what sovereign immunity is all about, and that is what this present section is supposed to eliminate.

So all that Delegate Love's amendment does if you accept it is to nullify this entire section and leave us right

where we are now, with the need for the permission of the government to sue the government, which is exactly what the elimination of which is the intent of this section.

CHAIRPERSON FREEMAN: Delegate Oulahan.

DELEGATE OULAHAN: You are not getting the full picture of what this amendment does, and that is the reason why Mr. Love's amendment, what the section does and why Mr. Love's amendment is important. When you destroy sovereign immunity, every one of you in this room who is a D.C. employee can never get liability insurance because you are going to be sued in both your public and personal capacity and the District of Columbia is not going to pay for your damages. They might pay for your legal fees. That is the revolution that is being carried out, and at least to some extent Mr. Love's amendment ameliorates it.

CHAIRPERSON FREEMAN: Delegate Robinson.

DELEGATE ROBINSON: I rise to ask the counsel if in fact what Delegate Oulahan has just stated is correct, that employees of the state would then be open to personal law suits and not protected by the state any more.

MR. THOMAS: I don't see anything in here that would say that the state would have to protect them. What I see is them being sued in both their official and personal

capacity, for suit and liability. But I don't see where the state would have to protect them. It could, but I don't see where it would have to.

While I have the microphone, however, as you know, very seldom do I recommend any action whatsoever, but as you see in my report I do recommend against adopting this section. I don't think that --

CHAIRPERSON FREEMAN: Mr. Thomas, I will have you speak to that when we are considering adopting the entire section.

Is there further discussion of the Love amendment? Delegate Moore.

DELEGATE T. MOORE: Point of order. I would like to know the definition of "sovereign immunity. I have the understanding that this means the supreme power of the citizen, the people in office. Do I have the right definition of sovereign immunity means the supreme power of the citizens?

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: As indicated in the committee's report, sovereign immunity is an old doctrine which says that the state, that is the sovereign is immune from suit, the sovereign can do no wrong. The sovereign therefore, the state is immune from being sued by the citizen for whatever it may

do or may not do -- that it may do that it should not have done unless the state gives you permission to sue it, and sometimes the state does and in recent decades and generations permission has been granted in a couple of different places. In other instances, however, you are done grave wrongs and the courts will say sovereign immunity, you ain't got no appeal, you cannot go anywhere.

This section attempts to say in effect philosophically the state exists for us, we don't exist for the state. If anybody ought to need permission, the state -- we ought to be giving the state permission to sue us and do things to us, not the other way around. But I am not proposing that.

CHAIRPERSON FREEMAN: Delegate Kameny, could you please speak to the Love amendment.

DELEGATE KAMENY: He asked the question and I am answering it.

CHAIRPERSON FREEMAN: Yes, I know, but I would like to direct --

DELEGATE KAMENY: Sovereign immunity is simply the immunity of the state from suit, without permission. This eliminates that.

CHAIRPERSON FREEMAN: Is there further discussion of the Love amendment? Delegate Love.

DELEGATE LOVE: Fellow delegates, before I start I would like to point out one thing I find sort of interesting and that is line 14 of this everybody would be allowed to be sued except the judges. So if the judge took a bribe to make a decision against you, you couldn't sue the judge.

DELEGATE KAMENY: Oh, yes.

DELEGATE LOVE: So I think it is very interesting that we let everybody be sued in this except the judges and the courts.

I am not attempting to end-run around this. I think this is a very poor provision. I think you have already heard the reasons for it. Anybody could sue any person who worked for the government any time. If your trash doesn't get picked up, you sue the trash collector. If you don't get education in the schools, you can sue the teachers, you can sue the principal, you can sue the school board, you can sue the governor, you can sue everybody you can right and left. And when you sue people, lawyers take these on what is called contingency basis. They take 30 percent of whatever you win, so if they think there is some money that is going to come, they are going to sue.

Meanwhile we are going to pay for the defense of those suits and we are also going to pay in the case if the



suits win. Now, I agree that there should be some limitations on sovereign immunity. I also think those are the kinds of limitations that our elected legislators should put. I think if we enact this with the current language, this could literally break the state later on.

So again I don't think we as delegates have the right to do this. I would urge you to adopt my amendment which puts some reasonable limitations on when the state can be sued.

DELEGATE KAMENY: Only where the public has given permission in certain areas and in other areas where the public has not, you cannot.

DELEGATE LOVE: There are numerous instances where an individual has sued the government without --

DELEGATE KAMENY: What I am saying is that you can sue the government in certain circumstances, for example, having to do with the government not having followed certain procedures, et cetera, et cetera, et cetera. But unless that is in place, that legislation, that authorization, that permission -- no, you may not sue.

DELEGATE LOVE: The suit against the Department of Health and Human Services, is that not done because of the permission given him?

DELEGATE KAMENY: The ultimate authorization given to you by the government itself.

CHAIRPERSON FREEMAN: Thank you. Delegate Nahikian.

DELEGATE NAHIKIAN: I just thought I would point out for the information of the delegates that some officials of the District of Columbia now are not immune from suit. I can sue anyone of the public officials of the District government and they are not immune now.

CHAIRPERSON FREEMAN: Is there any further discussion of the Love amendment? Delegate Jackson.

DELEGATE JACKSON: I think it is quite clear because there are some myths running around and I think he just cleared it up. It is a myth right now that people working for the government cannot be sued, and this has been pointed out when we asked certain people around certain things and they get these opinions and things like that, that is not true. It is true that public officials in Washington can be brought to suit. There are conditions, but we are not talking about those conditions. There is no need for it. And I would say, Madam Chairman, without any hesitation, there is no need for us to lie about the point. And if people do it then they should be called to question.

There is one other point of personal privilege,

Madam Chair. I can understand fully well the legal opinions and for the body to want them. Madam Chair, general counsel should be an impartial person who should not give us his opinion that we should vote something down. That is not why we hired him, Madam Chair, and I don't think we should allow that here, even though we have addressed that to him. We only have him to give us the information that is legally definable, not his opinion about how we should vote.

CHAIRPERSON FREEMAN: Thank you, Delegate Jackson.

Is there further discussion of the Love amendment? Delegate Long.

DELEGATE LONG: I would like to make it clear that the District government can be sued. The thing that concerns me is the suits both official and personal. I take that to mean that they can be sued both as an official and as an individual. Then does the liability for those suits fall upon the state and upon them as an individual, and they can take everything you have? Do I have a correct interpretation.

CHAIRPERSON FREEMAN: Will the committee answer that, please.

DELEGATE C. MOORE: It is standard practice in suing for some wrong done to a person by the government to sue both the government and the individual. If the plaintiff is

successful, generally the government actually does the paying, although either one could. Now, there are some circumstances in which sovereign immunity actually prevents you suing any government but does not prevent you from suing the individual.

Also I would point out that the court is still supporting the doctrine of sovereign immunity more with respect to states than they are with respect to municipalities, and the courts are treating the District of Columbia as if it were a municipality rather than as a state. So if we don't do this, there is some danger that the court decisions might shift in the direction of allowing more sovereign immunity rather than less.

For instance, the recent case of a Virginia policeman who chased somebody into the District and the courts here said he could be sued but the courts in Virginia said no, and the Congress people from Virginia were coming and trying to change our law also so that he couldn't be, and he was a representative of the state of Virginia. Now, if he had been a policeman of the Town of Falls Church, maybe it would have been different.

CHAIRPERSON FREEMAN: Is there further debate on the Love amendment? Delegate Hilda Mason.

DELEGATE H. MASON: I have a question. It says

"shall be amenable to." I would like to have that clarified.

DELEGATE LOVE: It means may be sued.

CHAIRPERSON FREEMAN: Is there further discussion on the Love amendment? May we vote on the Love amendment? The Love amendment will begin Section 16 with the following words, "Unless otherwise provided by law." Has everybody got that? Now, remember, there is the Coates amendment, this is an amendment to the Coates amendment. In fact, I guess it is really a substitute in effect.

All those in favor of the Love amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Love amendment is defeated.

DELEGATE LOVE: Could we have a division.

CHAIRPERSON FREEMAN: Yes. All those in favor of the Love amendment, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 8.

CHAIRPERSON FREEMAN: All those opposed to the Love

amendment, raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 23.

CHAIRPERSON FREEMAN: Abstentions?

(A show of hands.)

SECRETARY COOPER: 3.

CHAIRPERSON FREEMAN: The Love amendment is defeated. There were 8 in favor, 23 opposed, and we aren't clear whether there were 3 or 4 abstentions.

SECRETARY COOPER: There were 3.

CHAIRPERSON FREEMAN: 3 abstentions.

We're back to the Coates amendment, which would add to the very beginning of Section 16 the following words, "unless otherwise provided in this constitution." Is there discussion on that amendment? Delegate Croft.

DELEGATE CROFT: I call for the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: The Coates amendment would add at the beginning of Section 16 the following words "unless otherwise provided in this constitution." It has been moved and seconded that we close debate on the Coates amendment. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Debate is closed on the Coates amendment. All those in favor of adopting the Coates amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Coates amendment is adopted.

We are back to Section 16. I have a few amendments up here. Delegate Long, you had an amendment to Section 16?

DELEGATE LONG: I wish to amend the title of this section, and have it called State Government Liability, instead of Abolition of Sovereign Immunity.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we come up with a new title, substitute the words "State Government Liability" instead of "Abolition of Sovereign Immunity." Is there discussion on that motion? Delegate Schrag.

DELEGATE SCHRAG: I am opposed to this. At the present time it is a little unclear whether the Jordan amendment to the section is really a waiver of sovereign immunity or the creation of a new right to sue policemen. It is in a section labeled "Abolition of Soviereign Immunity," the rest of the section which is about abolition of sovereign immunity, but by describing a particular set of facts it tends to suggest that it creates a right of action against the police, rather than merely waiving their right to be sued, the difference being whether you can be sued or whether you lose the suit, if the facts are against you.

So I think that by changing the title of the section we tilt in favor of the interpretation of the Jordan amendment that makes it more dire than it may have been intended to be, and I would rather leave the section the way it is and let the courts make the decision as to how the Jordan amendment is to be interpreted.

CHAIRPERSON FREEMAN: Is there further discussion of the Long amendment? Delegate Long.

DELEGATE LONG: If I understand legal construction, the title has no force of law and therefore it is the impression that makes up people to support and not the words.

CHAIRPERSON FREEMAN: Delegate Cooper.



DELEGATE COOPER: (inaudible)

CHAIRPERSON FREEMAN: Delegate Paramore.

DELEGATE PARAMORE: I move the previous question.

DELEGATE : Second.

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on the Long amendment. All in favor of closing debate, say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is closed on the Long amendment which is to replace the title of Section 16 with the following words, "State Government Liability." All those in favor of the Long amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstentions?

(NO response)

CHAIRPERSON FREEMAN: The Long amendment is defeated.

Delegate Oulahan, you had an amendment to this section.

DELEGATE OULAHIAN: Madam Chairman, it would be a waste of time to propose the amendment. I merely ask my fellow delegates to carefully consider the proposal made by the committee and vote against it. It is mischievous and will have dire results upon our state.

CHAIRPERSON FREEMAN: Delegate Talmadge Moore, you have an amendment?

DELEGATE T. MOORE: On line 10, insert the words "appointed or elected" after the word "any" and add the an "s" on officer."

CHAIRPERSON FREEMAN: Repeat it, please.

DELEGATE T. MOORE: After the word "any" insert "appointed or elected officers." That is the end of the insertion.

CHAIRPERSON FREEMAN: Is there a second to that amendment?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: Discussion. Does everybody have that amendment? On line 10, after the word "any" it would read "appointed or elected" and change the word "officer" to "officers." Is that correct, Delegate Moore?

DELEGATE T. MOORE: Yes. Is there discussion on that? Delegate Kameny.

DELEGATE KAMENY: I would like to ask a question of the maker of the motion, if I may. I know of no -- perhaps I am missing something -- I know of no other government officials who are not appointed or elected. What does your motion do?

DELEGATE T. MOORE: I would just like to be specific.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: I would just like to ask a question of the maker of the motion, whether or not by using the words "appointed or elected officers" or "appointed and elected officers," does that mean that you would be -- is the intent of your motion to exempt career service government employees?

DELEGATE T. MOORE: (inaudible)

CHAIRPERSON FREEMAN: Excuse me, we cannot hear your answer.

DELEGATE T. MOORE: It is the persons we are talking about, appointed or elected officials, period, as well as career and anybody else.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: I would like to speak to it, but I am confused. Could you read it again?

CHAIRPERSON FREEMAN: Yes, I will read it. On line

10, after the word "any" it would read "and any appointed or elected officers" and I assume "or agents," you would make "agents" plural. You insert the words "appointed or elected" and then make plural "officer" and "agent."

Delegate Jackson, do you wish to speak to that?

DELEGATE T. MOORE: If you want me to withdraw it, Delegate Jackson, I can. If you don't understand it, I will withdraw it.

DELEGATE JACKSON: I think it would be good, sir. I think you should.

DELEGATE T. MOORE: Then I will withdraw it.

DELEGATE JACKSON: Thank you, sir. Thank you.

DELEGATE T. MOORE: Since you are confused, I will withdraw it.

CHAIRPERSON FREEMAN: Thank you. Delegate Coates.

DELEGATE COATES: Thank you, Madam Chair. We are debating on the section as amended now?

CHAIRPERSON FREEMAN: Yes.

DELEGATE COATES: We are now debating the section as amended. I urge us to consider two things, Madam Chair. One is that the section says "official acts." We are not talking about the personal behavior of anybody, as appear to me to be implied, because the person can be sued in his own

person. In recent years, the May Day demonstrators were arrested by then Chief Jerry Wilson and held under custody in D.C. Stadium, and they sued and in the decision Chief Wilson had to pay damages in part along with others because of an official act, not the way he wore his hat nor the way he chewed his gum, but for his official act; and in response to the comment that Delegate Schrag made as to the Jordan provision being arbitrary, for the very reason that police matters are an incendiary matter, we ought to adopt it because it provides with respect to their actions a criteria of reasonableness.

It therefore does not erode police prerogatives but protects them when they reasonably discharge their official duties. I urge us to adopt this section as amended.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: Madam Chair, I rise to offer an additional amendment and the amendment is to clarify the language on exactly the point that Rev. Coates was just speaking about, and that is this issue of personal versus official capacity. Therefore I would propose on line 10 to add the word "acting," "or agents thereof acting" and on line 11 to strike the word "or personal," so the phrase would read "any officer or agent thereof acting in official

capacity."

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we amend Section 16 so that line 11 will read as follows, "acting in official capacity." Is there discussion on that amendment?

Delegate Nahikian, would you like to speak to it?

DELEGATE NAHIKIAN: No.

CHAIRPERSON FREEMAN: Is there any other discussion on this amendment? Delegate Brian Moore.

DELEGATE B. MOORE: I have a question. Does it eliminate any of the words?

CHAIRPERSON FREEMAN: Yes, it eliminates the words "and personal."

DELEGATE B. MOORE: Thank you.

CHAIRPERSON FREEMAN: Is there further discussion on this? Does the committee care to respond?

DELEGATE KAMENY: The committee will accept the amendment.

CHAIRPERSON FREEMAN: The committee will accept the amendment. Delegate Coates?

DELEGATE COATES: Madam Chair, it seems that that is

accommodating line 13 where it speaks about official acts. That appears to me to mean official capacity. Line 11 provides that the suit may not only name the government but also name the individual. So if we change line 11, if we are providing in 11 what we have in 13, I don't know whether the intent of Delegate Nahikian is to say that only the state can be sued and not the individual. If that is her purpose, then we ought to change this language that is other than her amendment now before us.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: Let me just indicate that my reason for offering the amendment is not to say that someone could not be personally named in a suit, but rather to clarify and to make the language in 11 and 13 clear, because I felt like that both official and personal capacity was a confusion when it got to 13 where we are talking about official acts both commission and omission, and that was the intent of my amendment, was to clarify that concern so that there was no question about it, that I as a "public official" can be named personally in a suit but that they cannot take my house if I happen to own a house, which I don't, or my car.

CHAIRPERSON FREEMAN: May I ask a clarification of the committee, in line 10, would it enable an individual to

be named, the reference there to an officer or agent thereof? Would the committee please try to clarify the controversy that is on the floor right now?

DELEGATE KAMENY: One usually does in suits. You don't just sue the Secretary of so-and-so -- sometimes you do -- you sue John Jones, Secretary of.

CHAIRPERSON FREEMAN: The question is whether the Nahikian amendment would preclude naming an individual in a suit.

DELEGATE KAMENY: Oh, no. No, not at all.

CHAIRPERSON FREEMAN: Thank you. That was the question before us. Is there further discussion of the Nahikian amendment? Delegate Croft.

DELEGATE CROFT: I beg to differ with my honorable colleague, Delegate Kameny, because I think it does take that away. Currently -- yes, because it says -- if you take her words away, it would say "official" but it strikes the word "person." It means this: It means -- take myself, I Howard Croft, Associate Professor of U.D.C., can be sued two ways. I Howard Croft sued, U.D.C. Associate Professor can be sued that way. I can also be sued as Howard Croft. Currently I can be sued both ways in the District of Columbia right now. I carry insurance for that reason, as I can be sued both ways.



Everybody agrees that it only means that Howard Croft, Associate Professor can be sued. It in fact means my house is safe, my car is safe, everything about me is safe. I am sued because of my role, because of my office. Currently you can sue people both ways. You can sue them as those who occupy an office and as the person themselves. You can make claims on the person and their property. If you accept her language, you will not be able to make claims on that person's property. It means this: It means that I could wilfully with her language decide that I am going to abuse and harm my students wilfully and I could not be touched. Currently I can be touched.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: I too think the language is rather tricky and incorrect. There are many dangers in this. Let me give you an example. It is alleged here in Virginia of some man in an official capacity who ordered the mastectomy of 2,000 women in centers. Later on another judge, another city official allowed for several hundred people to be put into prison institutions or mental institutions on the guise that something was wrong with them.

What would happen now. It would say that a person who committed a criminal act would not be subject to personal

violations and that would be the meaning. If you ordered those things that I have mentioned, you are subject to suit and we don't want any language here that would keep that from being allowed.

But I do think that Delegate Nahikian has a good purpose, that is that it does defeat the purpose of what we want.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: As a public servant, I have to rise to speak here. In previous sections we have -- and I think rightfully so -- granted freedom to various elements of our society, particularly the oppressed. I think that we are having difficulty in attracting and getting people to come into public service. There is now a situation where there is total lack of confidence of people in public service, to the extent to which people who have skills and knowledge and information are reluctant to come into public service.

I do wholeheartedly agree that a person who is abusive in the use of their powers ought to be brought into check. But I think that to limit this in terms of not only what you do in your official acts and to jeopardize the rights of the property of your children and your inheritors is carrying it a bit far. And I think that some limitations -- I

think if the committee carefully selected language that allowed for the greatest amount of freedom but yet did not totally open the box to everything, and I think that we should adopt the committee language to this extent and should not go through with what I understand the Nahikian reservation. I think that the record ought to be clear, however, that we do have to offer some attraction to what has turned out to be a very unattractive service and that is the attraction of serving the public. I think that some opportunities ought to be provided for some protection of those people who try to serve, where the government does not provide the resources for you to do so and sometimes the policies which you are carrying out are the policies that have been established that sometimes do jeopardize the individual. So I think that something on the question of official capacity has to be limited so that the person's personal property is not jeopardized when they are limited to their family inheritance.

CHAIRPERSON FREEMAN: Delegate Baldwin.

DELEGATE BALDWIN: Madam Chair, I rise to a point of personal privilege. It does not require a second. It is not debatable. It is a question of privilege that relates to this convention as a whole. We have spent four hours and ten minutes on discussing and adopting two pages and seven

sections -- four hours and ten minutes. It goes without saying that we will not complete this section tonight, even though we have voted limited debate to this section. It is an impossible task now to complete and adopt all of the sections that this committee has for us.

Therefore, in looking at some research this morning, I discovered that 47 of our constitution have certain articles, certain sections within the Bill of Rights articles and they are freedom of religion, freedom of assembly, freedom of speech, seizures and searches, due process, excessive sanction, eminent domain and unenumerated rights.

This body has in fact adopted all of these sections up to this point with the exception of one. We have not discussed nor adopted Section 21, which is unenumerated rights of people. I have said this not to shock you but to let you know exactly where we are.

If prior to moving into debate on Section 17, we have 21 amendments to Section 17 -- 21. One person has three. One person has three amendments to Section 17, and there is a total of 21. Therefore at this time I move that we at the conclusion of Section 16, that we move to Section 21 which is unenumerated rights of people, we discuss, debate and adopt that section and at the end tonight, wherever we are, whether

we have completed 17, 18, we start and we will in fact then have a Bill of Rights, we will have a Bill of Rights consistent with 93 percent of all other states. We have adopted and the President said we are going to hold to this, that we would terminate debate on rights tonight. Tomorrow morning at 10:00 o'clock we are supposed to have second readings and at this point we only have 23 people who say they will be here and I doubt they will, that means we won't have a quorum and we will be just sitting here tomorrow with no second readings and no rights completed.

Madam Chairperson, that is the condition of this assembly at this point, therefore I move that we at the conclusion of Section 16 move to Section 21 which deals with unenumerated rights, and once we have adopted that we will be in conformity with the majority of the constitutions in this country and at the end we can cut off wherever we are. In other words, at 11 o'clock if we have adopted 17 and 18, then that is it. That is my motion.

DELEGATE SHELTON: I second it.

CHAIRPERSON FREEMAN: May I ask the maker of the motion if he regards this as requiring a suspension of the rules?

DELEGATE BALDWIN: That is not skipping the committee

report and that is not suspending the rules. The committee has -- and we have, as you know, moved from one section to another when it was incomplete, we have a right as a body, but I am sure the committee would go along with us, to take that one small section and then we could proceed and I think we will probably complete 17 and 18. That is the motion.

CHAIRPERSON FREEMAN: I am considering this briefly.

DELEGATE SIMMONS: Madam Chair, I would like to help you in your deliberations.

CHAIRPERSON FREEMAN: Thank you, Delegate Simmons. I will recognize you.

DELEGATE SIMMONS: What Delegate Baldwin has said is quite accurate. We have at times moved to another section while the committee is refining the language in a section so that is official and it does not move the article and make us in violation of our rules. We are still with the same rules, so I think that does not require a two-thirds majority of the suspension of the rules.

CHAIRPERSON FREEMAN: Thank you. For clarification of the motion, it is my understanding that the motion is that we adopt Section 16, we then move to Section 21 and then we resume the rest of the articles, is that correct, not that we defer consideration of the rest of the articles?

DELEGATE BALDWIN: That is correct.

CHAIRPERSON FREEMAN: Okay. Is that clear to everybody, what the motion is on the floor? I just want to make clear the motion before we proceed with debate. The motion on the floor is that we complete Section 16, we move to Section 21, we then resume debate with Section 17 on to the end of the article -- and I would remind delegates that we also have not completed Section 7. Now I will take debate on that motion.

DELEGATE COOPER: Point of clarification.

CHAIRPERSON FREEMAN: Point of clarification, Delegate Cooper.

DELEGATE COOPER: I believe also stated in Mr. Baldwin's motion was the fact that when the clock strikes 11, whatever is adopted is adopted, and whatever is not adopted just falls off the table. Was that in your motion as well?

CHAIRPERSON FREEMAN: Is that correct, Delegate Baldwin?

DELEGATE BALDWIN: That is the action this body took. You said we would complete it by Tuesday night and if you want to move on to tomorrow -- there was nothing said about anything further other than second reading. But this body has a right to change that.



DELEGATE JACKSON: Point of information.

CHAIRPERSON FREEMAN: Delegate Jackson, you have a point of information?

DELEGATE JACKSON: Yes, ma'am, I would like to reserve the right to speak on this.

CHAIRPERSON FREEMAN: Thank you. Delegate Simmons again. I have a lot of points of information so I will still have to take you all one at a time.

Delegate Corn, I am calling on one person at a time. Everybody has points of information at this point. I will only be able to hear one point -- Delegate Corn, Delegate Simmons.

DELEGATE SIMMONS: My point of information is that I just learned that walking down the steps is the greatest disadvantage of our remaining here after 11:00 o'clock, that we can in fact stay here, it does not cost \$75 an hour, that we ought to be mature enough to live up to our obligation, if that means that we want to move forward, that we stay until 1:00 or 2:00 or 3:00.

(Applause)

DELEGATE KAMENY: You can walk down nine flights --

CHAIRPERSON FREEMAN: Delegate Kameny, you are out of order.



DELEGATE CORN: Point of information.

CHAIRPERSON FREEMAN: I am taking one point of information at a time. Delegate Shelton.

DELEGATE SHELTON: I think that satisfies -- I wanted to ask the delegates whether or not they would accept an extension of the evening time and a modification of his original intent. I gather he would accept it if we were to go along past that time, that we would have debate.

CHAIRPERSON FREEMAN: Thank you. Delegate Corn.

DELEGATE CORN: It seems to me that Delegate Jordan has an unusual capability. He knows how to operate that elevator, therefore I would move to enlist him --

CHAIRPERSON FREEMAN: Delegate Corn, that motion is out of order. May we have order, please? We are considering Delegate Baldwin's motion. Delegate Croft is next.

DELEGATE CROFT: It is out of order to move that we recess, but I would like to move an amendment to the motion, and that is that we will remain assembled until we complete the Bill of Rights section.

DELEGATE : I second the motion.

CHAIRPERSON FREEMAN: The motion is the Croft motion which would, as I understand it, compel the delegates to remain assembled until the Bill of Rights is completed.

I have a point of clarification on the intent of that. Delegate Croft, did you mean that we would complete the Bill of Rights even if we stay here all night long to complete the Bill of Rights?

DELEGATE CROFT: The intention is this, for this reason: My concern is that we will not be able to complete the matters, that we will spend lots of time talking about Section 20 and that we will run out of time and we will have used time to avoid debating and discussing and deciding where we stand on the issues contained in Section 17, Section 13, Section 19, Section 21, and therefore I think that we should not stop until we are finished, that we should commit ourselves to stay here until we have finished the Bill of Rights section.

CHAIRPERSON FREEMAN: Perhaps you can alter your amendment, but Mrs. Ellington has told me that we cannot stay after 11:00 o'clock.

DELEGATE CROFT: We have just been told -- as I understand, the reason why we stay here until that time is because of the elevators. Delegate Simmons has just spoken to that issue before I made my amendment and Delegate Simmons said, number one --

CHAIRPERSON FREEMAN: Mrs. Ellington has said we

cannot and Delegate Bruning and Delegate Kameny will see the guard downstairs on the first floor to determine this.

Did you have a point of information, Delegate Simmons?

DELEGATE SIMMONS: I got my information from the person in writing.

CHAIRPERSON FREEMAN: I think we will await that clarification. Now --

DELEGATE SHELTON: Madam Chair --

CHAIRPERSON FREEMAN: Delegate Shelton, did you have a point of order?

DELEGATE SHELTON: Yes -- well, it is just to assist them in their direction. Perhaps there could be someone else that could be called that has some authority beyond the guard, since this is such an unusual circumstance.

CHAIRPERSON FREEMAN: That is a possibility and they have called.

Delegate Croft has an amendment on the floor -- may we have order, please, delegates. We can only hear one person at a time.

Delegate Croft, I did not hear you answer yes or no, the statement as to your intent. I was distracted at that point by other delegates. Are you saying that you were

making an amendment to the Baldwin motion that would compel delegates to complete the Bill of Rights or compel delegates to complete the Bill of Rights tonight?

DELEGATE CROFT: I am making an amendment that will compel delegates to complete the Bill of Rights tonight. I will modify it if it is necessary to compel delegates to complete the Bill of Rights at some other time. However, I am concerned about the question of whether -- I am concerned that the effect of the Baldwin motion as currently stated would mean that where we end up tonight is where we end up.

It is my concern that this body discuss, debate and decide based upon the debate and discussion where it stands on the issues presented in those articles and that we do not allow time to make that decision for us. I have presented a motion to essentially says that we will stay here until we finish the Bill of Rights.

Now, we can alter clocks in the sense that we can stop the clock at 10:30 or 11:00 o'clock and we can resume tomorrow with the clock where it is. However, it is my concern again that we complete the Bill of Rights and my amendment currently is that we will stay here until we do it tonight. I will accept an amendment.

CHAIRPERSON FREEMAN: The amendment is in order and

the amendment is by Delegate Croft to the Baldwin motion that the delegates will stay and complete the Bill of Rights. He also indicated that he will accept an amendment to that, so we are now discussing the Croft amendment to the Baldwin motion.

Now, in order of hands --

DELEGATE SHELTON: Point of order.

CHAIRPERSON FREEMAN: Delegate Shelton, you have a point of order?

DELEGATE SHELTON: Madam Chair, his motion changes the whole intent of the Baldwin motion. Perhaps he is desirous of a substitute motion, but his amendment completely defeats the concept of the Baldwin amendment.

CHAIRPERSON FREEMAN: The Baldwin motion, as I understand it, was a motion that we complete Section 16, we move on and consider Section 21 and then we can resume consideration of the rest of the Bill of Rights. The Croft amendment would have us in that consideration of the rest of the Bill of Rights considering it until we complete it tonight. I therefore rule that the Croft amendment is germane to the Baldwin motion.

DELEGATE SHELTON: Are you saying that he can offer it to the Baldwin amendment?

CHAIRPERSON FREEMAN: Right. We would -- because of the Baldwin motion we would go from 16 directly to 21, and then we would go back, as I understand it, and consider --

DELEGATE SHELTON: Thank you very much.

CHAIRPERSON FREEMAN: Is there discussion on the Croft amendment? Now I had Garner, Thomas, Jordan, Maguire, Brian Moore and Cooper and Jackson.

DELEGATE GARNER: Madam Chair, we have spent twenty minutes on the Baldwin motion and I call for the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on the Baldwin motion.

DELEGATE OULAHAN: Madam Chair --

CHAIRPERSON FREEMAN: Is this a point of order, Delegate Oulahan?

DELEGATE OULAHAN: Yes, may we have a show of hands instead of going through the yeas and nays, because that way we will save an extra step. A show of hands, rather than the yeas and nays.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate, and this would be closing debate on the Croft amendment which we will consider first. The Croft amendment to the Baldwin motion would have us, after we have

considered Section 16, according to the Baldwin motion, move to Section 21, according to the Baldwin motion, we would go back and resume consideration of the rest of the Bill of Rights, 17 through to the end, and also including Section 7 tonight.

All those in favor of closing debate on the Croft amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Debate is closed on the Croft amendment. All those in favor of the Croft amendment, please say "aye."

(A chorus of "yea.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Croft amendment is adopted. We are now back to the Baldwin main motion. Delegate Garner.

DELEGATE GARNER: I move the previous question.

DELEGATE CORN: We haven't had debate.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: I will have a vote on this. We haven't had debate. We could have two speakers on each side of this, so I will defer consideration of the vote on closing the question. In order, Delegate Jordan, you are next.

(4-B)

DELEGATE JORDAN: Madam Chair, I had some points that I wanted to raise and that is why I had some hesitancy to vote on the motion. One is that I understood it that there were 17 amendments to this one article. My question is do our rules provide for the committee and those individuals who are making these amendments to get together. Is it possible for us to implement that section of the rules so that they can be given 15 or 20 minutes to get together and see how many of those could be eliminated?

The second thing is just a point of information for the maker of the motion.

CHAIRPERSON FREEMAN: May we have it quiet in the room, please?

DELEGATE JORDAN: I notice that statistics were used as the basis for persuading us to accept -- I just want to say that 74 percent of the state constitutions have a right to bear arms provision.



DELEGATE BALDWIN: Madam Chair, at this time I will withdraw my amendment and we will see what will happen tomorrow morning.

DELEGATE SHELTON: I have not withdrawn my second.

DELEGATE BALDWIN: Okay. Well, if they want to stay here all night -- you see, they took four and a half hours, I for one definitely won't stay all night but I will be back here at 10:00 o'clock tomorrow morning. So let them, proceed and see what they will accomplish. So I withdraw my amendment.

CHAIRPERSON FREEMAN: Who was the seconder to the Baldwin motion? Delegate Shelton -- may we have it quiet, please?

Delegate Moore.

DELEGATE B. MOORE: Both the amendment and the motion, does that make for any thought of flexibility for tomorrow and the next day with regard to the schedule of style and drafting?

CHAIRPERSON FREEMAN: That is a ruling on an appropriate question and I will not rule on that until after we adopted those two. Then you will be in order for us to deal with that.

Delegate Jordan.

DELEGATE JORDAN: I would just say, Madam Chair, that I was not opposed to the motion, that I just wanted the record to reflect that 74 percent of the states contain an article on the right to bear on arms.

CHAIRPERSON FREEMAN: Thank you, Delegate Jordan. May we have order here. I do think that Delegate Jordan raised a very good point and that is perhaps Delegate Bruning could recollect the amendments which were submitted to Section 17. I am sure he has gone through them, to perhaps get those delegates that have made amendments to link up.

Now, the next speaker, Delegate Maguire.

DELEGATE MAGUIRE: I think we are doing the wrong thing. If everybody would raise their hand and say I am going to stay until this thing is done, so we can see who is going to stay, if we have enough people to do it. How many people are going to stay?

May I have attention of the delegates?

We have 26 people that are willing to work until it is done, and if you are not willing to work past Section 17, section 17 doesn't mean anything until we are finished, so if you are willing to stay for 17, remember that it is not going to mean anything unless we finish the whole document, and the document won't get finished unless we stay. Are there

23 people that will raise their hands and say yes, I will walk down nine flights of steps, yes I will stay?

CHAIRPERSON FREEMAN: How about a show of hands of people that are willing to stay? This is just a raw straw vote. Would people who are willing to stay tonight to complete the Bill of Rights please raise your hands? This is not an amendment.

May I have quiet.

(A show of hands.)

Thank you. We have 26 people who are willing to stay tonight.

(Applause)

The motion on the floor is the Baldwin motion. I have -- let's see, do I have any more speakers on the list? I do not. Delegate Garner.

DELEGATE GARNER: I move the question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: May we have it quiet in this room so we know what we are voting on? Quiet, everybody. It has been moved and seconded that we close debate on the Baldwin motion. The Baldwin motion would have us complete Section 16, then consider Section 21 and as amended by Delegate Croft we would then resume consideration of Section

17 through to the end of the Bill of Rights tonight. All those in favor of the Baldwin motion, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The Baldwin motion is adopted.

DELEGATE GARNER: Madam Chair, I believe the issue on the floor is the Nahikian motion.

CHAIRPERSON FREEMAN: Thank you, Delegate Garner.

You have a point of privilege, Delegate Cooper?

May we have it quiet in this room? We are back to consideration of Section 16, however we have a point of privilege on the floor.

DELEGATE COOPER: Inasmuch as the vote came at a time when an amendment was pending, I just wanted to request the permission of the body to reflect in the record action on this motion after the adoption of Section 16.

CHAIRPERSON FREEMAN: Is that agreeable to this body?

(A chorus of "yes.")

CHAIRPERSON FREEMAN: Thank you. The motion on the

floor right now is the Nahikian amendment and, to refresh your recollection, that is in Section 16, line 11, the Nahikian amendment would add the word "acting" and delete the word "both," "acting in official capacity," deleting the words "and personal."

Now, we have discussed that extensively. Is there further discussion on that?

DELEGATE GARNER: I move the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: Thank you, Delegate Garner.

It has been moved and seconded on the Nahikian amendment to close debate. May I have your attention, please? Let's not waste our precious seconds tonight. We are all very tired.

Delegate Rothschild, Delegate Jones, Delegate Barnes. All those in favor of closing debate on the Nahikian amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Abstentions?

(No response.)

CHAIRPERSON FREEMAN: Debate is now closed on the Nahikian amendment. I will repeat the amendment one more time.

It would read as follows on line 11, "acting in official capacity." All those in favor of the Nahikian amendment, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: The amendment is defeated.

Is there further discussion on Section 16? Delegate Robinson.

DELEGATE ROBINSON: I move the previous question.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on Section 16. All those in favor of closing debate, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is closed on Section 16.

All those in favor of adopting Section 16 as amended, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: I am going to call for a division on that. All those in favor of adopting Section 16, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 21.

CHAIRPERSON FREEMAN: All those opposed to adopting Section 16, please raise your hands and keep them up.

(A show of hands.)

SECRETARY COOPER: 9.

CHAIRPERSON FREEMAN: Abstentions?

(A show of hands.)

SECRETARY COOPER: 3.

CHAIRPERSON FREEMAN: Section 16 is adopted.

DELEGATE COOPER: Madam Chair.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: I move for a 15-minute recess.

SEVERAL VOICES: No. No.

DELEGATE COOPER: I have been here since 4:00 o'clock.

DELEGATE : So have I.

DELEGATE COOPER: But I am working and you're not.

CHAIRPERSON FREEMAN: Delegate Brunning, would you

replace Delegate Cooper so he can have some kind of break.

We are now on Section 21. Delegate Mason.

DELEGATE C. MASON: I move Section 21.

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we adopt Section 21. Discussion? Is there discussion on Section 21?

(No response)

Shall we vote on Section 21? Delegate Brian Moore.

DELEGATE B. MOORE: If the committee does not mind, I have not had time to read their description. Could they give some brief explanation?

CHAIRPERSON FREEMAN: Yes, very briefly.

DELEGATE KAMENY: Section 21 is absolutely standard in virtually all constitutions. It is essentially not quite verbatim. The Ninth Amendment to the Constitution of the United States -- and all it says in effect is that if you have a laundry list you are stuck with that list and nothing more unless you say that things not on the list are also included, even if you don't list them. So all that this says is we are not only adopting these rights but others that we may not have mentioned either, they are also there.

CHAIRPERSON FREEMAN: Thank you. Delegate Garner.



DELEGATE GARNER: I move the previous question.

CHAIRPERSON FREEMAN: Has it been seconded?

DELEGATE : I second it.

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate on Section 21. Yes, Delegate Cooper?

DELEGATE COOPER: In the question and answer period we were unable to finish the question and answer and the Chair at that time said that there would be liberalism with regard to asking the committee questions on these particular sections that we did not get to.

CHAIRPERSON FREEMAN: Ask your question.

DELEGATE COOPER: My question about Section 21 is that, with regard to limitations upon the government, apparently this closely parallels the Ninth Amendment to the U.S. Constitution, with that exception. The Ninth Amendment to the U.S. Constitution does not speak to any limitations upon the government, and I just wanted to know what the committee's reason was for putting that in.

DELEGATE KAMENY: Did you read the committee's report?

DELEGATE COOPER: Yes.

DELEGATE KAMENY: It tells you explicitly and expressly why, because the federal government and state

governments are in a different posture. The federal government has only those powers inherently and philosophically given to it by the states and the people. The state government has all powers unlimited except what you take from them. Therefore a federal Bill of Rights gives people rights. A state Bill of Rights not only gives people rights but puts limitations on government. There is a conceptual difference and this is a subtle one but a real one and this addresses that.

CHAIRPERSON FREEMAN: Thank you. The question has been called. We shall bring that to a vote. All those in favor of closing debate on Section 21, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(No response)

CHAIRPERSON FREEMAN: Debate is closed on Section 21. All those in favor of adopting Section 21, please say "aye."

(A chorus of "aye.")

CHAIRPERSON FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRPERSON FREEMAN: Abstentions?

(No response)

CHAIRPERSON FREEMAN: Section 21 is adopted.